

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LONNIE DZIESINSKI and CHERYL  
DZIESINSKI,

UNPUBLISHED  
December 10, 1999

Plaintiffs-Appellants,

v

No. 208555  
Alpena Circuit Court  
LC No. 96-002155 NM

MICHAEL G. MACK,

Defendant-Appellee.

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Before: Whitbeck, P.J., and Gribbs and White, JJ.

PER CURIAM.

Plaintiffs appeal by delayed leave granted the trial court's order granting defendant's motion for summary disposition. We affirm in part, reverse in part, and remand for further proceedings.

Plaintiffs owned a house occupied by their son and daughter-in-law, Brian and Cathleen. When Brian and Cathleen began divorce proceedings, plaintiffs commenced eviction proceedings against Cathleen. Plaintiffs retained defendant to represent them in the suit against Cathleen. Subsequently, Brian retained defendant to represent him in the divorce proceedings. Defendant did not discuss with plaintiffs the possibility that he might have a conflict of interest between his representation of them and his representation of Brian.

During the trial of the real estate case, Cathleen asserted that she had an equitable interest in the house because she and Brian had provided plaintiffs with \$15,000 for the down payment. Plaintiffs asserted that those funds represented payment for the use of certain motor vehicles. Defendant advised Lonnie that the case should be settled. Cheryl's signature did not appear on the settlement agreement.

In their complaint for legal malpractice, plaintiffs alleged that defendant failed to adequately represent them in that he advised settling the real estate case in order to improve Brian's position in the divorce case, and he failed to discuss the settlement with Cheryl or to obtain her approval of the settlement. Plaintiffs asserted that as a result of defendant's actions they were forced to pay Cathleen \$20,000 for equity in a home that she did not own.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that plaintiffs' and Brian's positions were not in conflict, and that Cheryl had complied with the settlement and had not sustained a loss. The trial court granted the motion, concluding that no jury issues existed.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

The elements of legal malpractice are: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) the negligence was a proximate cause of an injury; and (4) the fact and extent of the injury alleged. *Coleman v Gurwin*, 443 Mich 59, 63; 503 NW2d 435 (1993).

Plaintiffs argue that the trial court erred by granting defendant's motion for summary disposition. We agree in part, and remand for further proceedings. Plaintiffs and defendant had an attorney-client relationship. Defendant failed to discuss with plaintiffs any potential or actual conflict of interest arising out of his simultaneous representation of them and Brian. Disclosure of any such potential or actual conflict of interest is required. MRPC 1.7. Plaintiffs offered the opinion of an expert in legal malpractice to the effect that if their version of events was true, an actual conflict of interest existed, and defendant breached the applicable standard of care by failing to advise them of the conflict and obtain their informed consent to his continued representation. Taking plaintiffs' well-pled facts as true, i.e., that defendant's efforts to improve Brian's position in the divorce action lead to an ill-advised settlement of the real estate case, we conclude that plaintiffs' claim was not so clearly unenforceable as a matter of law that plaintiffs could not establish that it was more likely than not that defendant's actions resulted in actual injury to plaintiffs, specifically a loss of \$20,000 as payment to Cathleen for equity in a home that she did not own. *Pontiac School Dist v Miller, Canfield, Paddock & Stone*, 221 Mich App 602, 614-615; 563 NW2d 693 (1997); *Keliin v Petrucelli*, 198 Mich App 426, 429-430; 499 NW2d 360 (1993).

As to plaintiffs' claim regarding defendant's failure to obtain Cheryl's consent to the settlement, we observe that while an attorney has the duty to disclose and discuss with his client good faith offers to settle a matter, *Joos v Drillock*, 127 Mich App 99, 106; 338 NW2d 736 (1983), plaintiffs never countered defendant's argument and the court's observations that Cheryl did not suffer damages as a result of the breach of duty, and that she accepted the settlement and never objected to it until filing this lawsuit. Thus, we affirm this aspect of the court's order of summary disposition.

The trial court's order granting defendant's motion for summary disposition is reversed in part, and this case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Roman S. Gibbs

/s/ Helene N. White